



OFFICE OF DISPUTE RESOLUTION

DEPARTMENT OF THE ATTORNEY GENERAL

STATE OF HAWAI'I

In the Matter of STUDENT, by and through
PARENT,¹

Petitioner(s),

vs.

DEPARTMENT OF EDUCATION, STATE
OF HAWAI'I, and CHRISTINA
KISHIMOTO, Superintendent of the Hawai'i
Public Schools,

Respondents.

DOE-SY2021-024

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DECISION

Due Process Hearing: November 16-17, 2020

Hearings Officer: Chastity T. Imamura

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. INTRODUCTION

On August 18, 2020, the Department of Education, State of Hawai'i and Christina Kishimoto, Superintendent of the Hawai'i Public Schools (hereinafter "Respondents" or "DOE") received a request for a due process hearing (hereinafter "Complaint") under the Hawai'i Administrative Rules Title 8, Chapter 60, in accordance with the Individuals with Disabilities

Education Act, from Student, by and through Parent (hereinafter “Petitioners”). Respondents submitted a response to Petitioners’ Complaint on August 28, 2020.

On September 14, 2020, a prehearing conference was held before Hearings Officer Chastity T. Imamura, with Keith H.S. Peck, Esq. (hereinafter “Mr. Peck”), representing Petitioners, and Anne T. Horiuchi, Esq. (hereinafter “Ms. Horiuchi”), representing Respondents. At the prehearing conference, the Due Process Hearing (hereinafter “Hearing”) was scheduled for November 16-17, 2020.

Due to the coronavirus 2019 global pandemic, the parties stipulated to the Hearing being conducted via video conferencing to ensure compliance with government mandated social distancing.² An Order Regarding Video Conference Due Process Hearing was issued on November 2, 2020, which set forth the parameters for the video conference hearing. These parameters included: the instructions to participate via the Zoom video conference internet platform; a court reporter would participate in the video conference hearing, swear in the witnesses, and transcribe the proceedings; all witnesses were required to participate in the Hearing using both the video and audio functions of the Zoom platform; and that witnesses and parties would ensure confidentiality of the proceedings by participating in a private setting.

The Hearing commenced on November 16, 2020, using the Zoom video conferencing platform. Each attendee to the Hearing was sent a link through email to access the Hearing by the Office of Dispute Resolution. Present in the video conference Hearing were Hearings Officer Chastity T. Imamura; Parent, and Mr. Peck, on behalf of Petitioners; and Resource Teacher (hereinafter “RT”) and Ms. Horiuchi on behalf of Respondents, as well as the assigned

² See Governor of the State of Hawai‘i’s Thirteenth Proclamation Related to the COVID-19 Emergency, effective September 22, 2020.

court reporter. The Hearing continued to November 17, 2020 as scheduled, and the testimony of the witnesses was completed on that date.

At the Hearing, Petitioners called Parent as their sole witness during their case-in-chief and rested. Respondents called Student Services Coordinator (hereinafter “SSC”), Special Education Teacher (hereinafter “SPED”), and General Education Teacher (hereinafter “GET”), during their case and rested. Petitioners called Parent to testify regarding rebuttal evidence.

Each party submitted their exhibits for the Hearing by the disclosure deadline of November 6, 2020. On November 17, 2020, a list of exhibits that were discussed during the Hearing was provided to counsel by this Hearings Officer. Both parties were allowed to propose additional exhibits that were not discussed at the Hearing to be received as evidence in this matter. The lists of proposed additional exhibits were due on November 25, 2020. Any objections to the proposed exhibits were due on December 2, 2020. Respondents submitted the following additional exhibits for consideration in the decision in this case. Respondents’ Exhibit 1, pages 1-8; Exhibit 2, pages 9-12; Exhibit 4, pages 18-19; Exhibit 6, pages 45-61; Exhibit 35, pages 334-340; and Exhibit 48, which was the video of the student-focused team meeting on July 9, 2020. Petitioners did not object to the introduction of any of the aforementioned exhibits, so they were also received in addition to any exhibits that were discussed or mentioned at the Hearing.

Petitioners’ exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-017, 035-036; Exhibit 2, pages 038-048, 051-052, 054, 057-060; and Exhibit 3, pages 061-148, 152-180. Respondents’ exhibits that were received and considered as part of this Decision are as follows: Exhibit 1, pages 001-008, Exhibit 2, pages 009-012; Exhibit 4, pages 017-019; Exhibit 6, pages 045-061; Exhibit 8, pages 070-093; Exhibit

16, pages 140-141; Exhibit 19, pages 147-150; Exhibit 28, pages 169-171; Exhibit 30, pages 182-204; Exhibit 31, pages 207-208, 214-215, 218-222; Exhibit 32, pages 223-225; Exhibit 33, pages 243-245; Exhibit 34, pages 246-248, 251-253; Exhibit 35, pages 294-301, 303-319, 325-328, 334-340, 346-348, 367, 377-379, 382-429; Exhibit 36, pages 467-472; Exhibit 37, pages 496-502; Exhibit 39, pages 576-586; Exhibit 43, pages 611-624; and Exhibits 47 and 48, which were audio recordings.

Both parties wanted the opportunity to submit closing briefs regarding the legal issues and the relevant facts supporting those issues to this Hearings Officer for review. The deadline by which the briefs were to be submitted was Friday, December 18, 2020. Both parties timely submitted their closing briefs on that date. Petitioners submitted both a Closing Brief and an Amended Closing Brief by the deadline and both of which were reviewed by this Hearings Officer. This Hearings Officer notes that the Amended Closing Brief is substantially similar to the Closing Brief and corrects typographical errors and adds an extra paragraph regarding Issue #4. For purposes of this decision, since the substance of both briefs were the same, all references made to Petitioners' Closing Brief will reference the Amended Closing Brief.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the undersigned Hearings Officer renders the following findings of fact, conclusions of law and decision.

II. JURISDICTION

This proceeding was invoked in accordance with the Individuals with Disabilities Education Act (hereinafter "IDEA"), as amended in 2004, codified at 20 U.S.C. § 1400, *et seq.*; the federal regulations implementing the IDEA, 34 C.F.R. § 300.1, *et seq.*; and the Hawai'i Administrative Rules § 8-60-1, *et seq.*

III. ISSUES PRESENTED

Petitioners assert eleven (11) issues in the Complaint to be addressed at the Hearing:

1. Whether Respondents denied Student a free and appropriate public education (hereinafter “FAPE”) when the Individualized Educational Program (hereinafter “IEP”) team did not have some or all of the following information to properly discuss or address Student’s needs: a) Information from a Functional Behavior Assessment (hereinafter “FBA”); b) Information on regression/recoupment during school breaks; c) Information on Student’s social skills needs.
2. Whether Respondents denied Student a FAPE when the DOE failed to have adequate discussions about Student’s placement and frequency of Student’s school day during Student’s extended school year (hereinafter “ESY”). Respondents also denied Student a FAPE by placing Student in an overly restrictive placement for ESY that does not provide Student a sufficient means to address Student’s socialization needs.
3. Whether Respondents denied Student a FAPE when the DOE provided Student with “Individual Instructional Support” instead of a registered behavioral technician (hereinafter “RBT”), which Student requires to meet Student’s needs.
4. Whether Respondents denied Student a FAPE when they failed to timely assess Student to determine if Student could be provided an RBT.
5. Whether Respondents denied Student a FAPE in the IEP from June 23, 2020 by using the term “and positive reinforcement,” which is vague and does not provide a means to enforce the provision.
6. Whether Respondents denied Student a FAPE by failing to address Student’s need for behavioral interventions/supports in Student’s IEP from June 23, 2020.
7. Whether Respondents denied Student a FAPE by failing to discuss and/or address Student’s safety needs.
8. Whether Respondents denied Student a FAPE by failing to discuss and/or address Student’s needs for a process and/or supports to enable Student to transfer into the offered public school.
9. Whether Respondents denied Student a FAPE by not placing Student in the least restrictive environment. Specifically, this addresses a) Student’s placement for recess, lunch and school activities and excursion, and b) Student’s placement for physical education.
10. Whether Respondents denied Student a FAPE by failing to properly determine Student’s placement. Parent’s request concerning Student’s placement was not addressed, and Student’s placement description is improper.

11. Whether Respondents denied Student a FAPE by informing Parent that there will be a material failure of the DOE to implement portions of Student's IEP.

In Petitioners' Closing Brief, Petitioners withdrew Issue #3, therefore Issue #3 will not be addressed in this Decision.

IV. FINDINGS OF FACT

Student's background

1. Student is ___ years old and currently attends Private School.³
2. Prior to 2019, Student was diagnosed with ___ (hereinafter "___") and qualified for special education and related services under the eligibility category of ___.⁴
3. In the 2018-2019 school year, Student was enrolled at Home School and had an IEP that did not provide Student with the services of an RBT.⁵
4. During the 2018-2019 school year, Student had significant behavioral concerns regarding aggressive behavior, self-injurious behavior and elopement.⁶
5. On one occasion during the 2018-2019 school year, Student eloped from Student's classroom [REDACTED]
[REDACTED]
[REDACTED].⁷

6. On May 23, 2019, Petitioners filed a Complaint and Resolution Proposal under DOE-

³ Testimony of Parent, Transcript of Proceedings Volume 1, page 15, lines 23-24, page 37, line 8 to page 38, line 8 (hereinafter referenced as "Tr.V1, 15:23-24, 37:8-38:8"); Petitioners' Exhibit 1, page 001-002 (hereinafter referenced as "P-Ex.1, p.001-002").

⁴ P-Ex.1, p.002.

⁵ See P-Ex.3, p.154-163; see also IEP meeting recording, R-Ex.47, approximate time stamp 2:14:10-2:16:50 (hereinafter referenced as "R-Ex.47, IEP-2:14:10-2:16:50")

⁶ Testimony of Parent, Tr.V1, 43:4-44:2; see R-Ex.47, IEP-0:06:05-0:31:01.

⁷ Testimony of Parent, Tr.V1, 16:18-17:4, 86:13-87-13.

- SY1819-046, which raised, *inter alia*, issues regarding medication of Student; failure to implement Student's IEP; failure to address Student's behavioral needs, specifically failure to provide Student with a one-to-one aide; parent participation; and ESY eligibility.⁸
7. On June 5, 2019, Parent sent Principal a copy of a letter from Neuropsychologist, which indicated that Student had a new diagnosis of ___ with cognitive and language impairments, ___ (hereinafter "___"). The letter also included a statement that Student would "highly benefit from attending [Private School] for the summer program and even into the following school year if possible." No report was attached, and the letter indicated that the report would be available in approximately 2-3 weeks.⁹
8. On December 11, 13, and 24, 2019, a Compromise and Settlement Agreement (hereinafter "SA-12/24/19") was signed by Parent, Parent 2, and the Complex Area Superintendent for the DOE respectively, resolving the case under DOE-SY1819-046.¹⁰
9. The SA-12/24/19 included an agreement for the DOE to pay for Student's tuition at Private School for the 2019-2020 school year, including ESY, reimbursement for transportation, and payment for applied behavioral analysis (hereinafter "ABA") services for Student, such as an RBT and Licensed Behavioral Analyst (hereinafter "LBA"). The SA-12/24/2019 also included provisions for Parent to sign consent forms for the DOE to conduct any assessments deemed necessary for a re-evaluation

⁸ Testimony of Parent, Tr.V1, 17:6-18:14; P-Ex.3, p.154-163.

⁹ Testimony of SSC, Tr.V1, 101:8-102:6; R-Ex.28, p.169-171.

¹⁰ P-Ex.3, p.164-174.

of Student.¹¹

10. Student attended Private School for the 2019-2020 school year. Student's class at Private School consisted of ___ students. Student received the services of a one-to-one RBT throughout the school day with RBT supervision provided by an LBA.¹²
11. ABA Company was the private company that provided services to Student at Private School.¹³
12. ABA Company conducted an initial FBA on Student on June 28, 2019 and prepared an ABA Therapy Initial Assessment and Treatment Plan. The treatment plan included identifying target behaviors to address with Student; strategies to address the behaviors including using "differential reinforcement" and "positive reinforcement" to reinforce appropriate behaviors and the absence of inappropriate behaviors; social skills goals; and data collection. An updated copy of this Treatment Plan dated September 16, 2019 was provided to Home School on January 27, 2020.¹⁴
13. On June 16, 2020 ABA Company created an Updated Treatment Plan for Student. Parent received this Updated Treatment Plan but did not provide it to Home School,¹⁵ nor was Parent aware of how Parent received it or whether it was provided to Private School.¹⁶

¹¹ Testimony of Parent, Tr.V1, 18:15-19:9; P-Ex.3, p.164-174.

¹² Testimony of Parent, Tr.V1, 83:17-25; *see* P-Ex.3, p.136.

¹³ Testimony of Parent, Tr.V1, 48:25-51:5; P-Ex.2, p.59.

¹⁴ R-Ex.30, p.182-204.

¹⁵ While Parent did not specifically testify that Parent did not provide the Updated Treatment Plan to Home School, SSC testified, and the DOE presented evidence as to the information requested from Private School and Parent in preparation for the June 23, 2020 IEP meeting, and no evidence was presented that this Updated Treatment Plan was provided to the IEP team for use at the IEP meeting.

¹⁶ Testimony of Parent, Tr.V1, 67:2-17-68:5; P-Ex.3, p.083-130.

14. Student attended Private School in person until approximately March 2020, when the COVID-19 global pandemic forced a shutdown of many facilities including Private School.¹⁷
15. During the fourth quarter of the 2019-2020 school year, ABA Company continued to provide an RBT for Student at Student's home to work with Student on distance learning. Student continued to make progress through distance learning with RBT assistance.¹⁸
16. Student made progress with the assistance of the RBT at the Private School setting in reducing aggressive behaviors, self-injurious behaviors, and elopement.¹⁹

Communications prior to the June 23, 2020 IEP meeting

17. On February 3, 2020, SSC sent a letter to Parent requesting a copy of the report mentioned in the June 5, 2019 letter from Neuropsychologist and in the treatment plan from ABA Company that Home School received on January 27, 2020.²⁰
18. On February 12, 2020, SSC hand-delivered a Consent for Release of Information form to Parent to allow Private School to provide Home School with Student's educational records. This was given to Parent directly by SSC outside of Student's sibling's classroom.²¹
19. As early as February 13, 2020, SSC requested educational records from Private School, specifically requesting progress reports; service plans; communication with

¹⁷ Testimony of Parent, Tr.V1, 69:9-11; *see* R-Ex.35, p.303; *see also* Governor of the State of Hawai'i's Third Supplementary Proclamation Related to the COVID-19 Emergency, effective March 23, 2020.

¹⁸ Testimony of Parent, Tr.V1, 69:13-70:15; *see also* R-Ex.35, p.307-319.

¹⁹ Testimony of Parent, Tr.V1, 42:3-19, 57:6-61:25; R-Ex.47, IEP-0:20:27-0:26:20.

²⁰ Testimony of SSC, Tr.V1, 103:15-104:3; R-Ex.31, p.207-208.

²¹ Testimony of SSC, Tr.V1, 105:15-106:1; R-Ex.31, p.217.

teachers and service providers; attendance records; counseling records; behavior intervention plans; incident reports; and academic, behavioral and social data and reports.²²

20. On February 21, 2020, SSC sent another copy of the Consent for Release of Information form to Parent, since the initial form provided to Parent was not received by Home School.²³ On that same date, Principal sent a letter to Parent requesting Parent's assistance in arranging observation sessions of Student and Private School.²⁴ Both February 21, 2020 letters were marked "return to sender" by the U.S. Postal Service.²⁵
21. On March 9, 2020, May 1, 2020, and June 1, 2020, SSC sent additional follow-up letters to Parent requesting that Parent sign and return the Consent for Release of Information form to Home School.²⁶
22. In April and May 2020, Parent had an email exchange with Principal to inform Principal that Student's family moved but confirmed that the mailing address was still the address on file with Home School. During that exchange, Parent informed Principal that Parent will be continuing Student's education at Private School and would be disenrolling Student from Home School.²⁷
23. On May 1, 2020, SSC sent Parent a letter indicating that Home School's attempt to contact Parent at the telephone number on file was unsuccessful since the line

²² Testimony of SSC, Tr.V1, 107:15-23; R-Ex.31, p.214-215.

²³ Testimony of SSC, Tr.V1, 106:2-11; R-Ex.31, p.218-219.

²⁴ R-Ex.31, p.220.

²⁵ R-Ex.31, p.221-222.

²⁶ Testimony of SSC, Tr.V1, 106:17-107:1; R-Ex.32, p. 223-225; R-Ex.34, p.251-253; R-Ex.35, p.296.

²⁷ Testimony of Parent, Tr.V1, 66:3-67:1; R-Ex.33, p.243-245.

- appeared to be disconnected. These letters were sent via certified mail and were delivered on May 7, 2020.²⁸
24. Private School only provided Home School with Student's progress reports for the third quarter of the 2019-2020 school year on June 3, 2020. Private School provided Home School with Student's progress reports for the fourth quarter of the 2019-2020 school year on June 5, 2020.²⁹
25. In Private School Director's communication with SSC, Private School Director indicated that Private School had been closed since late March.³⁰
26. On June 6, 2020, Parent returned the signed Consent for Release of Information for Private School records to Home School.³¹
27. On June 9, 2020, SSC again sent a request for educational records to Private School, to include communication with teachers and direct service providers; attendance records; service plans; report cards; student work samples from throughout the 2019-2020 school year; counseling records; behavior intervention plans; incident reports; and academic, behavioral and social data and reports. A copy of the signed Consent for Release of Information was attached.³²
28. On the same date, June 9, 2020, SSC also mailed a request to Private School Director "or the Individual at [Private School] with Authority to Complete this Request" for all educational records for Student that had previously been requested by SSC.³³

²⁸ R-Ex.34, p.251-253.

²⁹ Testimony of SSC, Tr.V1, 109:22-110:17; R-Ex.35, p.303-319.

³⁰ R-Ex.35, p.303.

³¹ Testimony of SSC, Tr.V1, 107:2-14; R-Ex.35, p.326.

³² R-Ex.35, p.325.

³³ Testimony of SSC, Tr.V1, 18-111; R-Ex.35, p.327.

29. On June 16, 2020, SSC sent another request to Parent to provide Neuropsychologist's report, which was mentioned in the June 5, 2019 letter from Neuropsychologist and in the ABA Company treatment plan. Alternatively, SSC requested that Parent return to Home School a signed Consent for Release of Information form for Neuropsychologist to provide the report to Home School.³⁴ These documents were sent via certified mail to two addresses provided by Parent, and one appeared to be delivered on June 18, 2020.³⁵
30. Parent provided Home School with the June 12, 2019 report by Neuropsychologist on June 22, 2020.³⁶

IEP meeting on June 23, 2020

31. On June 23, 2020, an IEP meeting was held for the development of an annual IEP for Student. Due to the COVID-19 pandemic, the IEP meeting was held via WebEx, a videoconferencing platform. Present at the videoconference meeting were: Parent, SPED, SSC, Behavioral Health Specialist, Principal, GET, District Resource Teacher, DOE Licensed Behavior Analyst (hereinafter "DOE LBA"), District Educational Specialist, and Private School Director.³⁷
32. Parent's audio during the videoconference meeting was very muffled and difficult to hear and understand, but the team members, especially SPED, followed-up with Parent if there were any portions of Parent's statements that the team could not hear or understand.³⁸

³⁴ R-Ex.35, p.334.

³⁵ R-Ex.35, p.337-340.

³⁶ Testimony of SSC, Tr.V1, 104:9-105:6; R-Ex.8, p.70.

³⁷ P-Ex.1, p.015, R-Ex.6, p.061, R-Ex.47.

³⁸ R-Ex.47.

33. At the IEP meeting on June 23, 2020, the team used a draft IEP that was created based on Student's prior IEP and reports from Private School. The team worked through each of the sections of the IEP during the meeting.³⁹
34. After discussing preliminary matters, the team asked Parent to share Parent's concerns for Student, which were emailed to the team shortly before the beginning of the meeting. These concerns included Home School's handling of Student's paperwork, safety of Student, the importance of an RBT for Student due to the significant progress Student has made with the assistance of an RBT, and questions about counseling.⁴⁰
35. Parent expressed to the IEP team that Student's physical safety was more important to Parent than Student's education.⁴¹
36. Parent highlighted to the team that Private School was completely fenced in and there was only one entrance and exit.⁴²
37. The discussion then turned to Student's present levels of educational performance in the areas of behavior, mathematics, reading, and writing. During these discussions, Parent and Private School Director were asked for and provided their input.⁴³
38. Parent provided the team with information on Student's behavioral needs, including Student's improved behaviors at home, and noted that Student's aggressive behaviors have decreased but that Student still has a tendency to elope. Parent noted that Student's social skills have improved, that Student sought out other children to

³⁹ See generally R-Ex.47.

⁴⁰ R-Ex.47, IEP-0:07:35-0:11:58.

⁴¹ R-Ex.47, IEP-0:09:45-0:10:00.

⁴² R-Ex.47, IEP-0:09:10-0:09:30.

⁴³ R-Ex.47, IEP-0:06:05-0:52:19.

socialize, loved routines and schedules, and was learning to play games and adjust Student's behavior when losing a game.⁴⁴

39. Private School Director noted that Student had not had any significant behavioral issues during the 2019-2020 school year that could not be handled by Student's RBTs, however Student still had many of the same behavioral needs as in Student's previous IEP, with the exception of the aggressive or self-injurious behaviors.⁴⁵

40. Based on the present levels of educational performance, the IEP team created goals addressing Student's needs in the areas of mathematics, reading and writing, and created an additional goal for behavior.⁴⁶

41. The IEP decided that since Student already received services of an RBT, which were necessary for Student's success, that the team would include the services of an RBT in Student's IEP and continue to use Student's existing behavior intervention plan (hereinafter "BIP").⁴⁷

42. Home School representatives explained to Parent that the DOE requires that any student receiving the services of an RBT needed to complete a functional behavior assessment (hereinafter "FBA") under the DOE policy, so that Student would need to complete a DOE FBA, but that until the DOE FBA is completed, Student will continue to receive RBT services under the treatment plan Student was currently receiving.⁴⁸

43. Home School IEP team members also explained to Parent during the meeting that the

⁴⁴ R-Ex.47, IEP-0:16:39-0:22:30.

⁴⁵ R-Ex.47, IEP-0:23:02-0:30:00.

⁴⁶ R-Ex.47, IEP-0:59:50-1:15:23.

⁴⁷ R-Ex.47, IEP-1:40:03-1:40:30.

⁴⁸ Testimony of SSC, Tr.V1, 119:8-122:3; R-Ex.47, IEP-1:32:20-1:33:37.

- term “individual instructional support” refers to an RBT and the distinction between “adult support” and “individual instructional support” was that adult support was an educational assistant or paraprofessional employed by the DOE, while the individual instructional support was a contracted service provider like an RBT.⁴⁹
44. Home School IEP team members also explained to Parent that in the services section of the IEP, the IEP will reflect that Student will receive special education for the entire school day in the general education and special education setting because Student receives individual instructional support.⁵⁰
45. The IEP team discussed counseling for Student as a service to be provided in the IEP. Behavioral Health Specialist explained that the counseling would be to further support Student’s RBT and LBA services and address any additional behavioral concerns or work on behavioral goals for Student. The IEP team decided to keep Student’s counseling as a service in Student’s IEP.⁵¹
46. The IEP team inquired whether Parent would need transportation for Student, and when Parent indicated that it would be useful for Student to establish a routine, the team agreed to include it in the IEP.⁵²
47. The IEP team discussed parent education and training as a supplemental aid and support for Student’s IEP and it was agreed that it would be included in Student’s IEP.⁵³
48. A further discussion was held with the IEP team by going through each of the

⁴⁹ Testimony of SSC, Tr.V1, 129:3-23; R-Ex.47, IEP-1:32:20-1:34:37, 2:16:10-2:16:42.

⁵⁰ R-Ex.47, IEP-1:45:15-1:46:35.

⁵¹ R-Ex.47, IEP-1:18:00-1:28:28, 1:46:40-1:49:40, 1:59:35-2:00:10.

⁵² R-Ex.47, IEP-1:28:30-1:29:37.

⁵³ R-Ex.47, IEP-1:34:37-1:36:30.

supplemental aids and services that were contained in Student's prior IEP. During this time, input was requested from and provided by Private School Director as to whether the supplemental support and service was necessary for Student and should be included.⁵⁴

49. These supplemental aids and supports included: provide breaks when needed; visual cues; reminders of changes in advance; chunking of academic tasks; adjusting assignments/tasks to sufficiently demonstrate understanding; provide summer work packet; teach and allow for student to administer self-soothing pressure to calm down; maintain calm, neutral tone; simple, concise instructions; frequent checks for understanding; frequent verbal praise and positive reinforcement; and adhere to behavioral intervention plan (hereinafter "BIP").⁵⁵

50. Additional supplemental aids and supports suggested at the IEP meeting also included having directions read aloud; multi-sensory instructional approaches; LBA supervision of the RBT (to be listed as ABA services);⁵⁶ and small group setting for instruction.⁵⁷

51. The discussion at the IEP meeting then moved onto discussion of Student's eligibility for ESY. The team discussed Student's previous eligibility and decided to maintain Student's eligibility based on the determination in Student's last IEP.⁵⁸

52. Parent suggested that Student receive ESY for math and English, but be placed in another program for socialization skills, like summer program at the City and County

⁵⁴ R-Ex.47, IEP-1:36:49-1:49:40.

⁵⁵ R-Ex.47, IEP-1:36:49-1:49:40.

⁵⁶ R-Ex.47, IEP-1:43:13-1:43:40.

⁵⁷ R-Ex.47, IEP-1:43:55-1:44:40.

⁵⁸ R-Ex.47, IEP-1:50:03-1:59:50.

- Department of Parks and Recreation with Student's RBT.⁵⁹ Parent also wanted the break between services for Student reduced from seventeen (17) to seven (7) days.⁶⁰
53. Home School IEP team members attempted to explain to Parent that the purpose of ESY is to maintain the skills that Student has worked on and acquired during the school year.⁶¹
54. Home School IEP team members also informed Parent that while Parent has observed some regression of Student at home, the team needed actual data from Student's school setting to change the previous determination for Student's ESY. The IEP team suggested that once they received the data from Private School then they would meet again to discuss Student's ESY to revisit Parent's suggestion that the days before Student starts ESY be shortened.⁶²
55. Private School Director was asked about data from Private School regarding Student's regression or recoupment of skills during breaks, but Private School Director stated that ABA Company had that information and that Private School Director would get the information for the IEP team.⁶³
56. The IEP team then moved onto a discussion for the least restrictive environment in which Student would be able to receive Student's education. The team began with a brief explanation of the "Holland factors," which included the academic benefits for Student to be in the setting, the non-academic benefits for Student to be in the setting,

⁵⁹ R-Ex.47, IEP-1:50:55-1:51:50.

⁶⁰ R-Ex.47, IEP-1:52:36-1:53:13.

⁶¹ R-Ex.47, IEP-1:51:55-1:52:08.

⁶² R-Ex.47, IEP-1:53:09-1:53:35, 1:55:02-1:55:30.

⁶³ R-Ex.47, IEP-1:54:49-1:55:04.

- and the impact of Student on the teacher and other students in the class.⁶⁴
57. The IEP team discussed the academic and non-academic benefits for the different settings of general education and special education under the Holland analysis and listened to input from Parent.⁶⁵
58. After discussing the general education and special education settings and listening to input from Parent, the team determined that Student would benefit from a special education setting with some small group experiences in general education with Student's RBT present with Student throughout the day.⁶⁶
59. The Home School IEP team members suggested several opportunities that Student could have small group educational opportunities with general education peers, such as recess, lunch, "STEM" week, physical education, and class parties. Parent was opposed to any suggestion by the team and insisted that Student be placed in a small classroom with the same ___ students for the entire school day, similar to the setting Student was currently in at Private School.⁶⁷
60. One suggestion by GET was to coordinate a small party in the smaller special education classroom and bring over a few general education students to participate with Student to expose Student to general education peers. Parent was opposed to that idea as well.⁶⁸

⁶⁴ Testimony of SSC, Tr.V1, 115:7-16; Testimony of SPED, Tr.V1, 161:18-162:2; R-Ex.47, IEP-2:02:48-2:03:10

⁶⁵ R-Ex.47, IEP-2:04:07-2:10:40.

⁶⁶ Testimony of SPED, Tr.V1, 163:24-164:12; *see generally* R-Ex.47, IEP-2:03:10-2:39:53.

⁶⁷ Testimony of SSC, Tr.V1, 115:17-117:21; Testimony of SPED, Tr.V1, 162:3-163:23; Testimony of GET, Tr.V2, 188:5-190:11; *See e.g.* R-Ex.47, IEP-2:21:00-2:22:30, 2:23:48-2:24:10, 2:24:34-2:24:51, 2:25:20-2:26:00, 2:28:28-2:29:02, 2:33:55-2:35:42.

⁶⁸ Testimony of GET, Tr.V2, 190:12-191:2; R-Ex.47, IEP-2:36:38-2:38:00.

61. Parent repeatedly pointed to safety concerns for Student as the reason that Parent was opposed to any setting besides a small group setting for Student. Parent specifically told the team that Parent's concern was Student being on a large campus.⁶⁹
62. During the same discussion, the IEP team discussed Student's least restrictive environment for the ESY sessions. After considering the suggestions by Parent, the team agreed to place Student in a special education setting for ESY and meet again to further discuss Student's ESY.⁷⁰
63. The Home School IEP team members also explained to Parent that they would want to create a transition plan to allow for Student to successfully transfer back to Home School from Private School.⁷¹
64. Principal assured Parent that Home School would do whatever it needed to for Student to safely return to Home School and could successfully implement Student's IEP at Home School.⁷²
65. At the conclusion of the IEP meeting, the Home School IEP team members informed Parent that they intend to meet again prior to the fall break to further discuss ESY for Student and to discuss the reevaluation for Student, including the DOE FBA that needed to be completed and any other concerns that Parent had.⁷³
66. After nearly two (2) hours and forty-five (45) minutes of discussion, Principal made the offer of FAPE to Parent, which included having Student at Home School, special education, counseling, transportation, all supplemental aids and supports, the

⁶⁹ See generally, R-Ex.47, IEP-2:18:00-2:35:42.

⁷⁰ R-Ex.47, IEP-2:44:15-2:45:33.

⁷¹ R-Ex.47, IEP-2:30:16-2:30:47.

⁷² R-Ex.47, IEP-2:39:53-2:40:16.

⁷³ R-Ex.47, IEP-2:45:00-2:45:33.

Individual Instructional Support, with a follow-up functional behavior assessment, parent education, and ESY after seventeen (17) days in a special education setting. The offer made by Principal placed Student in a special education setting with possible integration or introduction into the general education setting slowly with small groups and only after informing Parent of the plan to integrate Student.⁷⁴

67. At the IEP meeting, Parent did not object to or reject the IEP or inform Home School that Parent would be rejecting the IEP and sending Student to a private school and seeking reimbursement for said private school.⁷⁵

68. At the conclusion of the IEP meeting, the team discussed having a student-focused team (hereinafter “SFT”) meeting, but Parent could not stay longer and wanted to reschedule the meeting. Parent was informed that the SFT meeting would be to discuss the functional behavior assessment and any other assessments that the team would like to conduct with Student for re-evaluation purposes.⁷⁶

Student’s IEP from the June 23, 2020 IEP meeting

69. The IEP developed for Student at the June 23, 2020 meeting (hereinafter “IEP-06/23/2020”) contained the following relevant provisions: Parent input/concerns; Student’s strengths and needs in the areas of behavior, mathematics, reading, and writing; seven (7) annual goals and objectives in the categories of language arts (4), mathematics (2), and health (behavior); Student’s qualification for ESY; Student’s special education and related services; supplementary aids and services, and the statement of the extent to which Student would not participate with non-disabled

⁷⁴ R-Ex.47, IEP-2:45:50-2:48:48.

⁷⁵ See R-Ex.47.

⁷⁶ R-Ex.35, p.382-429.

students.⁷⁷

70. Student's ESY statement provided that Student qualifies for ESY after a break in services of seventeen (17) days, that Student will get special education and individual instructional support for two hundred forty (240) minutes/day, counseling for ninety (90) minutes weekly. During ESY, Student's primary focus was to be on behavioral goals and objectives in Student's IEP, and Student was placed in a special education setting on a Hawaii DOE public school campus.⁷⁸

71. Student's IEP-06/23/2020 provided Student with the following special education and related services: Special Education of one thousand eight hundred thirty (1830) minutes per week in the general and special education setting; Counseling for two hundred seventy (270) minutes per quarter in the general education and special education setting; and Transportation daily in the special education setting.⁷⁹

72. The Supplemental aids and services, program modifications and supports for school personnel included the following: Individual instructional support; Parent education and training; ABA services; Directions read aloud; Use of multisensory instructional approaches; Small group setting for instruction; Provide breaks when needed; Visual cues; Reminders of changes in advance; Chunk academic tasks; Adjusting assignments/tasks to sufficiently demonstrate understanding; Provide summer work packet; Teach and allow for student to administer self-soothing pressure to calm down; Maintain calm, neutral tone; Simple, concise instructions; Frequent checks for understanding; Frequent verbal praise and positive reinforcement; and Adhere to

⁷⁷ See P-Ex.1, p.001-005; R-Ex.6, p.045-061.

⁷⁸ P-Ex.1, p.014, R-Ex.6, p.058.

⁷⁹ P-Ex.1, p.014, R-Ex.6, p.058.

BIP.⁸⁰

73. Student's educational placement statement indicated that Student will not be with non-disabled peers for math, language arts, science, and social studies. Student will be with non-disabled peers for homeroom. Regarding recess, lunch, school activities, and excursions, the DOE will work on including Student slowly as Student acclimates back to the DOE setting and has a sense of comfort and safety.⁸¹

Communications after the June 23, 2020 IEP meeting

74. On June 30, 2020, SPED forwarded a letter from Principal to Parent that included Student's finalized IEP from the June 23, 2020 meeting (hereinafter "IEP-06/23/2020"), the prior written notice (hereinafter "PWN") dated June 30, 2020 from the IEP meeting (hereinafter "PWN-06/30/2020"), Student's treatment plan from ABA Company; and a draft transition plan.⁸²

75. Principal's letter indicated that the draft transition plan included was to minimize harmful effects of Student's return to Home School and to address concerns that Parent expressed during the meeting. Principal stated that Home School would like to meet with Parent to get further input in developing and refining the transition plan.⁸³

76. On June 30, 2020, SSC emailed Private School Director asking again for the educational records for Student to include: Behavior intervention plans/behavior treatment plans including copies of updated plans and behavioral data; Student work samples; academic, behavioral and social data and reports; attendance records;

⁸⁰ P-Ex.1, p.014-015, R-Ex.6, p.058-059.

⁸¹ P-Ex.1, p.016, R-Ex.6, p.060.

⁸² Testimony of SPED, Tr.V1, 164:13-20; R-Ex.35, p.382-429.

⁸³ R-Ex.35, p.383.

service plans; communication with teachers and direct service providers; counseling records, and incident reports. The request specifically indicated that the above information requested was for the entire 2019-2020 school year.⁸⁴

77. On June 30, 2020, for the first time and despite representations made at the IEP meeting on June 23, 2020, Private School Director informed SSC that Home School needed to request behavioral intervention plans/behavioral treatment plans, including updated plans and behavioral data; service plans; and incident reports directly from ABA Company. Private School Director also informed SSC that Private School does not keep student work beyond the school year and do not keep logs or save communications with teachers and direct service providers.⁸⁵

SFT meeting on July 9, 2020

78. The SFT meeting was held on July 9, 2020. Present at the SFT meeting were: Parent, SSC, SPED, GET, Principal, DOE LBA, District Resource Teacher, and Clinical Psychologist.⁸⁶

79. At the SFT meeting, the team discussed the need for an FBA as explained to Parent at the IEP meeting based on the DOE's policy that an FBA and BIP must be completed for Student to continue to receive RBT services in the public-school setting.⁸⁷

80. The team further explained to Parent that since Student was due for a reevaluation in a year, they wanted to discuss other possible assessments they could do as well. The team raised the report by Neuropsychologist and the new diagnosis of ___ for

⁸⁴ R-Ex.35, p.377-378.

⁸⁵ Testimony of SSC, Tr.V1, 147:24-148:10; R-Ex.35, p.379.

⁸⁶ Testimony of SPED, Tr.V1, 164:21-24; *see* SFT meeting recording, R-Ex.48, approximate time stamp 01:20-02:15 (hereinafter referenced as R-Ex.48, SFT-01:20-02:15”).

⁸⁷ R-Ex.48, SFT-03:40-07:13.

Student. After some discussion, the team believed it would be helpful to conduct an emotional behavior assessment on Student to get more information on this diagnosis.⁸⁸

81. The team then discussed additional assessments for Student, including conducting cognitive and academic assessments, as well as a social family assessment and adaptive behavior assessment due to Student's recent move and changes in the family. Parent did not have any questions about the additional assessments being completed, in addition to the FBA and the emotional behavior assessment and did not raise any objections to the additional assessments.⁸⁹

82. Before concluding the meeting, Parent was informed that Home School would be preparing a PWN listing the discussions that were held at the July 9, 2020 SFT meeting (hereinafter "PWN-07/09/2020"), and that consent forms would be sent to Parent for the reevaluation and assessments.⁹⁰

83. The PWN-07/09/2020 contained a list of the discussions that were held at the SFT meeting on July 9, 2020, including an explanation that the DOE would be conducting a reevaluation of Student and listed the assessments that were to be conducted. The assessments to be conducted were: FBA, emotional behavior, academic, social work, adaptive behaviors, cognitive assessments and a classroom observation. The DOE was not going to conduct motor skills or speech and language assessments due to those not being areas of concern for Student.⁹¹

⁸⁸ R-Ex.48, SFT-07:32-17:16.

⁸⁹ R-Ex.48, SFT-27:55-30:44.

⁹⁰ R-Ex.48, SFT-30:50-32:40.

⁹¹ P-Ex.2, p.035-036; R-Ex.4, p.018-019.

Communications after the July 9, 2020 SFT meeting

84. On July 15, 2020, Principal sent another copy of the draft transition plan to Parent and requested that Parent contact Home School to set up a meeting to discuss Student's transition back to Home School and gather input from Parent regarding the transition plan for Student.⁹²
85. On July 29, 2020, Principal responded to Parent's inquiry regarding Student's school environment at Home School in light of the COVID-19 situation. Principal informed Parent that Student would attend Home School Monday through Friday in a face-to-face environment. Principal provided Student's weekly schedule for Parent in the response.⁹³
86. On August 10, 2020, DOE LBA emailed Parent to set up a meeting to speak with Parent regarding Student's DOE FBA and inquired with Parent when Student would be at Private School, so DOE LBA could observe Student. On August 11, 2020, Parent informed DOE LBA that Student would be attending Public School in the 2020-2021 school year. DOE LBA provided this information to Home School.⁹⁴
87. On August 15, 2020, Parent emailed Public School to inquire about registering Student there, due to the family moving into their district.⁹⁵
88. On August 18, 2020, Private School Director emailed Parent to inform Parent that Private School was moving their start date back to September 15, 2020 and end of the school year date to June 30, 2021.⁹⁶

⁹² R-Ex.36, p.467-472.

⁹³ P-Ex.2, p.046.

⁹⁴ R-Ex.37, p.496-502.

⁹⁵ P-Ex.2, p.051-052.

⁹⁶ Testimony of Parent, Tr.V1, 38:17-21; P-Ex.2, p.054.

89. On August 18, 2020, Petitioners filed the instant Complaint and Resolution Proposal.⁹⁷

90. On August 20, 2020, Parent signed an enrollment contract with Private School for Student to attend Private School for the 2020-2021 school year.⁹⁸

Private School

91. Private School is a nonprofit, non-graded, multidisciplinary school specifically designed for students with challenges in the areas of socialization, communicative and language development, and peer relations [REDACTED]

[REDACTED]

[REDACTED].⁹⁹

92. Private School currently has around ___ students enrolled, with a small class size averaging a teacher to student ratio of ___-to-___.¹⁰⁰

93. ABA Company provides ABA services to Student at Private School.¹⁰¹

94. Private School's tuition of Thirty-Eight Thousand Five Hundred Dollars (\$38,500) for the 2020-2021 school year includes: custom tailored education program for each student, fully integrated access to onsite technology and facility equipment, speech, language and occupational therapy.¹⁰²

95. Private School is located at a facility that is completely fenced and has one entrance and exit through the main office.¹⁰³

⁹⁷ R-Ex.1, p.001.

⁹⁸ Testimony of Parent, Tr.V1, 37:17-23; P-Ex.3, p.131-132.

⁹⁹ P-Ex.3, p.136.

¹⁰⁰ P-Ex.3, p.141-145.

¹⁰¹ Testimony of Parent, Tr.V1, 19:25-21:9.

¹⁰² P-Ex.3, p. 131, 138.

¹⁰³ Testimony of Parent, Tr.V1, 22:8-23:9.

96. ABA Company provides Student with RBT and LBA services that are partially covered by Student's medical insurance. This service also includes parent training.¹⁰⁴
97. Student program at Private School includes a combination of ABA services and special education program that has been tailored to Student's needs and includes use of manipulatives, objects, token economy, pictures of things, and other modalities.¹⁰⁵
98. Student's treatment plan created by ABA Company includes six (6) goals for behavior, three (3) goals for language and communication, eight (8) goals for social skills, and nine (9) goals for adaptive skills. These goals include target skills such as decrease inappropriate behaviors, provide appropriate verbal response to an adult's conversational attempt, play interactive motor game with peers, sharing with peers, engage in independent leisure activities, work independently for ten minutes, money knowledge, and verbally express upcoming events.¹⁰⁶
99. Data for Student's program is collected using a computer program and includes data from an FBA as well as information from an on-site board-certified behavior analyst (hereinafter "BCBA").¹⁰⁷
100. Student's homeroom teacher is an RBT and there are three (3) BCBA's on campus that are familiar with Student and can assist Student's RBT if necessary.¹⁰⁸
101. For the 2020-2021 school year, Student receives the assistance of a reading coach.¹⁰⁹

¹⁰⁴ Testimony of Parent, Tr.V1, 19:25-21:9.

¹⁰⁵ P-Ex.2, p.059.

¹⁰⁶ P-Ex.3, p.098-128.

¹⁰⁷ P-Ex.2, p.060.

¹⁰⁸ P-Ex.2, p.060.

¹⁰⁹ Testimony of Parent, Tr.V1, 57:11-58:2.

102. Student receives instruction in math and language arts and uses a program called “i-station,” and Student receives science and social studies instruction as well. In September 2020, Student was working on the five (5) senses for science and studied maps, globes and compasses for social studies.¹¹⁰

103. Private School sends weekly newsletters to Parent to inform Parent of what Student is working on in the areas of math, language arts, science and social studies, as well as to provide any updates as to Student’s performance and behavior in school and reminders of upcoming events.¹¹¹

V. CONCLUSIONS OF LAW

IDEA framework

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services designed to meet their unique needs.”¹¹² A FAPE includes both special education and related services.¹¹³

Special education means “specially designed instruction to meet the unique needs of a child with a disability” and related services are the supportive services required to assist a student to benefit from their special education.¹¹⁴ To provide a FAPE in compliance with the IDEA, the state educational agency receiving federal funds must “evaluate a student, determine whether that student is eligible for special education, and formulate and implement an IEP.”¹¹⁵

¹¹⁰ P-Ex.3, p.152-153.

¹¹¹ P-Ex.3, p.152-153.

¹¹² *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179-91, 102 S.Ct. 3034, 3037-3043 (1982); *Hinson v. Merritt Educ. Ctr.*, 579 F.Supp.2d 89, 98 (D. D.C. 2008) (citing 20 U.S.C. §1400(d)(1)(A)).

¹¹³ H.A.R. §8-60-2; 20 U.S.C. §1401(9); 34 C.F.R §300.34; 34 C.F.R §300.39.

¹¹⁴ *Id.*

¹¹⁵ *Dep’t of Educ. of Hawai’i v. Leo W. by & through Veronica W.*, 226 F.Supp.3d 1081, 1093

The IEP is used as the “centerpiece of the statute’s education delivery system for disabled children.”¹¹⁶ It is “a written statement for each child with a disability that is developed, reviewed, and revised” according to specific detailed procedures contained in the statute.¹¹⁷ The IEP is a collaborative education plan created by parents and educators who carefully consider the child’s unique circumstances and needs.¹¹⁸

Denials of FAPE determinations are based on one of two categories of review. Procedural violations can occur when the educational agency has not complied with the procedures set forth in the IDEA.¹¹⁹ Procedural violations do not automatically result in a denial of FAPE, however, as a secondary determination must be made as to whether the violation resulted in: 1) loss of educational opportunity, 2) significant infringement on parental participation, or 3) deprivation of educational benefits.¹²⁰

Substantive violations of the IDEA require an examination of the child’s IEP. The DOE is not required to “maximize the potential” of each student; rather, the DOE is required to provide a “basic floor of opportunity” consisting of access to specialized instruction and related services which are individually designed to provide “some educational benefit.”¹²¹ However, the United States Supreme Court, in *Andrew F. v. Douglas County School Dist.*,¹²² held that the educational benefit must be more than *de minimus*. The Court held that the IDEA requires “an

(D. Hawai’i 2016).

¹¹⁶ *Honig v. Doe*, 484 U.S. 305, 311, 108 S.Ct. 592, 598, 98 L.Ed.2d 686 (1988).

¹¹⁷ H.A.R. §8-60-2; 20 U.S.C. §1401(14); 34 C.F.R §300.22.

¹¹⁸ H.A.R. §8-60-45; 20 U.S.C. §1414; 34 C.F.R §300.321-300.322.

¹¹⁹ *Amanda J. ex rel. Annette J. v. Clark County School Dist.* 267 F.3d 877, 890 (9th Cir. 2001) (citing *Rowley*, 458 U.S. at 206-207, 102 S.Ct. at 3034), see also *L.J. by and through Hudson v. Pittsburg Unified School District*, 850 F.3d 996, 1003 (9th Cir. 2017).

¹²⁰ *Id.* at 892.

¹²¹ *Rowley*, 458 U.S. at 200-201, 102 S.Ct. at 3047-3048.

¹²² 137 S.Ct. 988, 197 L.Ed.2d 335 (2017).

educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."¹²³

"The standard for evaluating IEPs, commonly called 'the snapshot rule,' is not retrospective."¹²⁴ An IEP is to be judged by looking at whether the IEP goals and goal achieving methods were objectively reasonably calculated to confer Student with a meaningful benefit based on the information available to the IEP team at the time the IEP was created.¹²⁵ In determining appropriateness, "an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is at the time the IEP was drafted."¹²⁶

A. Petitioners failed to prove that Respondents denied Student a FAPE by failing to have some or all of the information to properly discuss Student's needs

Petitioners' first issue is that Respondents denied Student a FAPE by failing to have some or all of the following information to properly discuss or address Student's needs: a) Information from a Functional Behavior Assessment; b) Information on regression/recoupment during school breaks; and c) Information on Student's social skills needs. Specifically, Petitioners argue that Respondents had a responsibility to collect the necessary information the IEP team needs to draft an IEP that addresses each of Student's unique needs.

Respondents are responsible for ensuring that Student's IEP is reviewed not less than annually to determine whether the annual goals for Student are being achieved.¹²⁷ The IDEA also requires the IEP to be revised, as appropriate, to address lack of progress toward annual

¹²³ *Andrew F.*, 137 S.Ct. at 1001, 197 L.Ed.2d 335; *See also, Blake c. ex rel. Tina F. v. Hawai'i Dept. of Educ.*, 593 F.Supp.2d 1199, 1206 (D. Hawai'i 2009).

¹²⁴ *K.K. ex rel. K.S.K. v. Hawaii*, 2015 WL 4611947 *16 (D. Hawai'i 2015) (*quoting J.W. ex rel. J.E.W. v. Fresno Unified Sch. Dist.*, 626 F.3d 431, 439 (9th Cir. 2010).

¹²⁵ *K.K.*, 2015 WL 4611947 *16 (*quoting Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999)).

¹²⁶ *J.W.*, 626 F.3d at 439 (*quoting Adams v. Oregon*, 195 F.3d at 1149).

¹²⁷ H.A.R. §8-60-48(b)(1)(A); 20 U.S.C. §1414(d)(4)(A); 34 C.F.R. §300.324(b)(1).

goals, results of any reevaluation, information provided by parents, student's anticipated needs and any other matters.¹²⁸

Prior to the IEP meeting, Student's last attendance at Home School or any DOE public school was during the 2018-2019 school year, so Respondents attempted to gather all the information for Student's educational program from their known sources. SSC contacted Parent on February 3, 2020 to attempt to get copies of Neuropsychologist's report, which was referenced in Student's treatment plan.¹²⁹ SSC also provided Parent with consent forms to sign for release of information for Private School to provide Student's records to Home School.¹³⁰ Despite SSC sending multiple letters and emails, Parent did not sign the consent forms until June 6, 2020.¹³¹ Parent did not provide Home School with Neuropsychologist's report until the day prior to the IEP meeting, June 22, 2020.¹³²

SSC contacted Private School as early as February 13, 2020 to get Student's educational records.¹³³ This request included specific requests for documents such as progress reports; service plans; communication with teachers and service providers; attendance records; counseling records; behavior intervention plans; incident reports; and academic, behavioral and social data and reports.¹³⁴ On May 1, 2020 and June 1, 2020, SSC contacted Private School again with the same request for records. It was not until June 3 and 5, 2020, when Private School provided Home School with Student's work samples and progress reports for the 2019-2020

¹²⁸ H.A.R. §8-60-48(b)(1)(A); 20 U.S.C. §1414(d)(4)(A); 34 C.F.R. §300.324(b)(1).

¹²⁹ FOF 17.

¹³⁰ FOF 18, 20, 21.

¹³¹ FOF 26.

¹³² FOF 30.

¹³³ FOF 19.

¹³⁴ FOF 19.

school year.¹³⁵ On June 9, 2020, SSC again requested the specific request for Student's educational records but did not receive any of these documents from Private School.¹³⁶

At the IEP meeting, the Home School team also noted that they did not have specific data regarding Student's regression or recoupment during school breaks, and Private School Director told the team that ABA Company had those records and that Private School Director would get them for the team.¹³⁷ Despite the specific request from SSC to Private School Director for progress reports; service plans; communication with teachers and service providers; attendance records; counseling records; behavior intervention plans; incident reports; and academic, behavioral and social data and reports, Private School failed to inform SSC until June 30, 2020 that Private School did not possess the majority of that information, and that it would have to be obtained elsewhere or that it did not exist.¹³⁸

Respondents attempted to obtain all the information for Student's program to use in the discussion at Student's IEP meeting on June 23, 2020. Despite not receiving the information until just prior to the meeting or not at all, the IEP team was able to discuss Student's present levels of education, Student's needs, create goals and objectives, special education and related services, supplemental aides and supports, ESY, and Student's educational placement.¹³⁹ The discussion was based on the information that the team did have, including the treatment plan from ABA Company, as well as input from Private School Director and Parent, both of whom were present at the IEP meeting.¹⁴⁰

¹³⁵ FOF 24.

¹³⁶ FOF 27.

¹³⁷ FOF 55.

¹³⁸ FOF 77.

¹³⁹ FOF 33-63.

¹⁴⁰ FOF 33-62.

For this issue, Petitioners have highlighted three separate areas of concern regarding the lack of information obtained by Respondents; a) Information from a FBA; b) Information on regression/recoupment during school breaks; and c) Information on Student's social skills needs. Each of these areas will be discussed below.

1. Functional behavior assessment data

The IEP team had year-old data from an FBA that was completed by ABA Company in 2019 for Student at the IEP meeting on June 23, 2020.¹⁴¹ While the IEP team discussed at length during the meeting that while the DOE's policy requires an FBA to provide a student with an RBT, since Student was already receiving ABA services from an RBT and an LBA, Student's IEP would continue the service until the DOE could complete their own FBA.¹⁴² Even without any results from a DOE FBA, the IEP team was able to discuss Student's need for ABA services and agreed to provide them to Student.¹⁴³ Petitioners have failed to prove that Respondents failed to collect the necessary information from an FBA for the team to discuss and address Student's needs.

2. Data regarding regression/recoupment of Student during school breaks

Petitioners second contention is that Respondents did not collect the necessary data on Student's regression or recoupment during school breaks. Despite repeated requests for information from Private School and representations made by Private School Director at the IEP meeting, Respondents did not receive the requested information to further discuss ESY for Student.¹⁴⁴ In light of the lack of information, the IEP team decided to continue Student's

¹⁴¹ FOF 12.

¹⁴² FOF 41-42.

¹⁴³ FOF 41-44.

¹⁴⁴ FOF 55, 77.

eligibility for ESY and provided ESY services for Student.¹⁴⁵ While Parent requested to shorten the time period before ESY begins for Student, the team believed that more information was needed before that decision could be made.¹⁴⁶ Since the team believed there would be time to meet and discuss any additional information they obtained from ABA Company, the team agreed to meet again to further discuss Student's ESY.¹⁴⁷

Even if the failure to obtain the information directly from ABA Company were a procedural violation committed by Respondents, Petitioners have failed to prove that it rose to the level of a denial of FAPE. Not every procedural violation results in a denial of FAPE. In order to find a denial of FAPE, Petitioners must prove that the procedural violation committed by Respondents resulted in a loss of educational opportunity, a significant infringement on parental participation or a deprivation of educational benefits.¹⁴⁸ In this case, Petitioners have failed to prove that any possible procedural violation that occurred as a result of not having regression or recoupment data for Student's ESY resulted in a loss of educational opportunity, a significant infringement on parental participation or deprivation of educational benefits. Student had not started the 2020-2021 school year at Home School and Student's ESY from the 2019-2020 school year was covered by the SA-12/24/2019.¹⁴⁹ Student did not lose any educational opportunity by an IEP that was drafted several months before the first school break that Student would have been eligible for ESY. Parent was further informed that once the data is obtained, another meeting could be held address Parent's concerns prior to the first school break.¹⁵⁰

¹⁴⁵ FOF 51.

¹⁴⁶ FOF 54.

¹⁴⁷ FOF 54, 62, 65.

¹⁴⁸ *Amanda J.*, 267 F.3d at 892.

¹⁴⁹ FOF 9.

¹⁵⁰ FOF 54, 62, 65.

Petitioners have failed to prove that Respondents' failure to obtain the regression and recoupment data that were repeatedly requested from Private School prior to the IEP meeting was a procedural violation that resulted in a loss of educational opportunity for Student, a significant infringement on parental participation or a deprivation of educational benefits.

3. Student's social skills needs

Petitioners final argument related to the failure of Respondents to obtain information for discussion of Student's needs at the IEP meeting on June 23, 2020 is the failure of Respondents to gather information regarding Student's social skills needs. While Petitioners do not specify or define what is meant by the term "social skills needs," Petitioners have failed to prove that Respondents did not have information relating to Student's social skills. At the time of the IEP meeting, Home School had the updated September 2019 treatment plan from ABA Company that included several social skills goals,¹⁵¹ Student's previous IEP,¹⁵² and input from Parent and Private School Director.¹⁵³ Petitioners do not suggest that there were other sources of this information that Respondents failed to obtain that would have made a difference in the discussions that were had at the IEP meeting. Petitioners have failed to prove that Respondents committed a procedural violation by failing to have information about Student's "social skills needs" at the IEP meeting.

B. Petitioners have failed to prove that Respondents denied Student a FAPE by failing to have adequately discussions about Student's placement and frequency of Student's school day during Student's extended school day during ESY or by placing Student in an overly restrictive placement for ESY

Petitioners' second argument is that Respondents failed to have adequate discussions

¹⁵¹ FOF 12.

¹⁵² FOF 33.

¹⁵³ FOF 38-39.

about Student's placement and frequency of Student's school day during Student's ESY and that Respondents also denied Student a FAPE by placing Student in an overly restrictive placement for ESY that does not provide Student a sufficient means to address Student's socialization needs.

A school must provide ESY services only if the child's IEP team determines that the services are necessary 'for the provision of FAPE to the child.'¹⁵⁴ To qualify for extended school year services, "a claimant seeking an ESY must satisfy an even stricter test, because 'providing an ESY is an exception and not the rule under the regulatory scheme.'"¹⁵⁵ The standard for ESY is higher than the standard for the provision of special education and related services due to the requirement to show that the benefits the student gains during the regular school year will be significantly jeopardized if he or she is not provided with an educational program during school breaks.¹⁵⁶ Here, Respondents had an adequate discussion regarding Student's eligibility for ESY and, in fact, continued Student's eligibility for ESY even without data from ABA Company and allowed for further discussions once additional information was obtained from Private School or ABA Company.

Petitioners argue that Respondents failed to properly discuss the least restrictive

¹⁵⁴ *N.B. v. Hellgate Elementary School Dist., ex rel. Bd. of Directors, Missoula County Mont.*, 541 F.3d 1202, 1211 (9th Cir. 2008).

¹⁵⁵ *N.B.*, 541 F.3d at 1211, quoting *Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 315 (6th Cir.) quoting *Cordrey v. Euckert*, 917 F.2d 1460, 1473 (6th Cir. 1990), cert. denied, 552 U.S. 1042, 128 S.Ct. 693, 169 L.Ed.2d. 513 (2007); see also *Dep't of Educ. v. L.S. by C.S.*, 74 IDELR 71, 2019 WL 1421752 *7 (holding that ESY is "educational instruction beyond the normal academic year provided to students who need the additional instruction to retain information during a break in regularly scheduled classes, such as during the summer.").

¹⁵⁶ *Id.*, quoting *MM ex rel. DM v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537-538 (4th Cir. 2002); see also *K.K. ex rel. K.S.K. v. Hawaii*, 66 IDELR 12, 2015 WL 4611947; *Kenton County Sch. Dist. v. Hunt*, 384 F.3d 269, 279 (6th Cir. 2004) (confirming that "it is the proponent of ESY that bears the burden of proof either through the use of data or the use of expert testimony.").

environment for Student's ESY. The IEP team had extensive discussions regarding Student's least restrictive environment for the school year.¹⁵⁷ During this discussion, Parent repeatedly insisted that Student would not be able to safely function in a large setting such as a general education classroom and could only be placed in a small group setting of around ___ students.¹⁵⁸ The Home School team members explained to Parent during the ESY placement discussion that they would discuss Student's placement after the team decided on Student's placement for the school year, as the ESY follows the services and placement that is provided in Student's IEP for the school year.¹⁵⁹ The IEP team considered Parent's suggestions, but still wanted further data on Student's regression and recoument in the school setting, and agreed to meet again once the information was obtained prior to the first school break.¹⁶⁰

Petitioners have failed to prove that Respondents committed a procedural violation by not adequately discussing Student's ESY placement and frequency of Student's school day or by placing Student in an overly restrictive environment. As discussed *supra*,¹⁶¹ even if a procedural violation had occurred, Petitioners have failed to prove that any possible procedural violation in this area rose to the level of a loss of educational opportunity, significant infringement of parental participation or deprivation of educational benefits, where the IEP team clearly indicated that the team intended to gather additional data and further discuss Student's ESY program.

C. Petitioners have failed to prove that Respondents denied Student a FAPE by failing to timely assess Student to determine whether Student could be provided an RBT

¹⁵⁷ FOF 56-61.

¹⁵⁸ FOF 59-61.

¹⁵⁹ FOF 53-54.

¹⁶⁰ FOF 54, 62.

¹⁶¹ See Section V.A.(2).

Petitioners third argument is that Respondents denied Student a FAPE by failing to complete an FBA prior to the IEP meeting to determine if Student could be provided an RBT. The undisputed record in this case is that the IEP-06/23/2020 provided Student with an RBT.¹⁶² While the IEP team explained to Parent that an FBA must be done according to DOE policy for RBT services, they were going to provide Student with an RBT until the DOE could complete its own FBA.¹⁶³ Nowhere in the IEP-06/23/2020 or the IEP meeting of June 23, 2020 did the team indicate to Parent that this service was to be a temporary transition period service. The IEP team members explained several times to Parent during the IEP meeting and SFT meeting that the reason that they needed to conduct an FBA was because of the DOE policy regarding RBT services, but that the team would be providing Student with the RBT and ABA services in Student's IEP since that was what Student was already receiving.¹⁶⁴

Petitioners have failed to prove that Respondents denied Student a FAPE by failing to timely assess Student to determine whether Student could be provided an RBT.

D. Petitioners have failed to prove that Respondents denied Student a FAPE in the IEP-06/23/2020 by using the term "and positive reinforcement," which is vague and does not provide a means to enforce the provision

Petitioners' argue that the term "and positive reinforcement" is a vague term and is unenforceable in Student's IEP-06/23/2020, and this resulted in a denial of FAPE for Student. As an initial matter, the context to the term "and positive reinforcement" is a portion of one (1) of eighteen (18) supplementary aids and services, program modifications and supports for school personnel listed in Student's IEP-06/23/2020.¹⁶⁵ The full supplementary aid/support listed is

¹⁶² FOF 66, 72.

¹⁶³ FOF 53.

¹⁶⁴ FOF 41-43.

¹⁶⁵ FOF 72.

“Frequent verbal praise and positive reinforcement.” Petitioners have failed to offer any legal basis for their claim that the portion of the statement of supplementary aid/support is vague and unenforceable. Additionally, it is worth noting that throughout the treatment plans submitted by both Petitioners and Respondents from ABA Company for Student at Private School consistently use the term “differential reinforcement,” as well as the term “positive reinforcement.”¹⁶⁶ Petitioners have failed to prove that Respondents use of the term “and positive reinforcement” in one of the supplementary aids/supports in Student’s IEP-06/23/2020 is a denial of FAPE for Student.

E. Petitioners have failed to prove that Respondents did not address Student’s need for behavioral interventions/supports in Student’s IEP-06/23/2020

Petitioners next argument is that Respondents failed to address Student’s need for behavioral interventions/supports in Student’s IEP-06/23/2020. Petitioners argue that the main behavioral support for Student in Student’s IEP-06/23/2020 is “Adhere to BIP.” The record in this case shows that Petitioners’ argument fails.

Petitioners cite cases in which a student’s IEP fails to specify supports and services necessary to address the student’s behaviors, such as *Dep’t of Educ. State of Hawaii v. L.S., by and through C.S.*¹⁶⁷. In *L.S.*, the IEP attempted to address Student’s behavioral issues by requiring that a behavioral support plan be followed daily, however upon further review, the behavioral support plan was not made a part of the IEP, nor was it ever sent to or shown to parents until the administrative hearing.¹⁶⁸ The record in this case is distinguishable from the *L.S.* case. Here, the IEP team stated during the IEP meeting on June 23, 2020 that they were

¹⁶⁶ FOF 12.

¹⁶⁷ 2019 WL 1421752 (D. Hawai‘i 2019).

¹⁶⁸ 2019 WL 1421752 at *11-12.

adopting Student's current RBT services, which included a behavioral intervention plan that already existed and was created by Student's private providers.¹⁶⁹ Parent had knowledge of the behavior intervention plan that was already being implemented by the RBT at Private School, as Parent had a copy of the Updated Treatment Plan from ABA Company.¹⁷⁰ Even if Parent did not have knowledge, the IEP team made it clear that the DOE would conduct a functional behavior assessment with Student to develop a behavior intervention plan to be made a part of Student's program.¹⁷¹

Further, Student's IEP-06/23/2020 addressed Student's needed behavioral interventions/supports in other areas besides "Adhere to the BIP." First, the IEP team at the June 23, 2020 IEP meeting created an additional goal for Student specifically to address Student's behavioral concerns noted by Parent and Private School Director.¹⁷² Student's IEP-06/23/2020 also included supplementary supports and services, such as Individual Instructional Support; Parent Education and Training; ABA services; small group setting for instruction; provide breaks when needed; reminders of changes in advance; teach and allow Student to administer self-soothing pressure to calm down; maintain calm, neutral tone; frequent checks for understanding; and frequent verbal praise and positive reinforcement.¹⁷³

Petitioners have failed to prove that Respondents did not address Student's needed behavioral interventions/supports in Student's IEP-06/23/2020.

F. Petitioners have failed to prove that Respondents denied Student a FAPE by failing to discuss and/or address Student's safety needs

¹⁶⁹ FOF 41.

¹⁷⁰ FOF 13.

¹⁷¹ FOF 41, 79.

¹⁷² FOF 38-40.

¹⁷³ FOF 72.

Petitioners argue that Respondents denied Student a FAPE by failing to discuss and/or address Student's safety needs. In their closing brief, Petitioners argue that since Respondents failed to provide a safety plan for Student in the IEP, that Parent's concerns for Student's safety was not addressed in Student's IEP.

Petitioners fail to acknowledge that throughout the IEP meeting, the IEP team discussed Parent's concerns for Student's safety.¹⁷⁴ In fact, Parent's insistence that Student would only be able to handle being placed in a small group setting dominated the IEP team's discussion for Student's least restrictive environment.¹⁷⁵ The IEP team discussed Student's safety concerns being addressed by Student being assigned an RBT to accompany Student throughout the entire school day, and to place Student in the special education classroom with only a small group of students.¹⁷⁶

Further the IEP team indicated to Parent that the team would like to have a transition meeting to transition Student from Private School to Home School and included a draft transition plan, which was comprised of ways to address Parent's concerns about safety and how to address Student's behaviors at Home School upon transitioning to the larger campus.¹⁷⁷

Even if the IEP team's failure to address Parent's safety concerns in the IEP, rather than at the transition plan meeting, was a procedural violation, Petitioners have not proven that this violation resulted in a loss of educational opportunity, significant infringement of parental participation or a deprivation of educational benefits.

¹⁷⁴ FOF 34-39.

¹⁷⁵ FOF 59-61, 63.

¹⁷⁶ FOF 41-44, 59-61, 63.

¹⁷⁷ FOF 75.

First and foremost, Parent indicated during Parent's testimony that no matter what the team would have presented as far as a plan for Student, the fact that DOE public schools are larger campuses will always be a safety concern for Parent.¹⁷⁸ Parent's single-minded desire for Student to attend Private School does not amount to a loss of educational opportunity for Student.

Additionally, Parent's concerns were discussed at the IEP meeting and Parent was given ample opportunities to raise those concerns.¹⁷⁹ The IEP team placed Student in a more restrictive environment due specifically to Parent's insistence that any larger and less restrictive setting would be detrimental to Student, despite Parent's inconsistent positions regarding Student's ability to safely navigate the larger settings with Student's RBT present.¹⁸⁰ The IEP team also provided Student with an RBT and ABA services without a functional behavior assessment, which is required by DOE policy, due to Student's success with the services and due to the safety concerns from Student's behaviors.¹⁸¹ Private School Director informed the IEP team that Student did not have any significant safety issues while at Private School that were brought to Private School Director's attention.¹⁸² The IEP team further attempted to address all of Parent's safety concerns in the draft transition plan to be discussed at another meeting.¹⁸³ Parent was the one who did not follow up with Home School to schedule and attend the transition plan meeting.¹⁸⁴

¹⁷⁸ FOF 61.

¹⁷⁹ FOF 34-36.

¹⁸⁰ FOF 52, 58, 62.

¹⁸¹ FOF 38, 41-42.

¹⁸² FOF 39.

¹⁸³ FOF 75.

¹⁸⁴ FOF 84.

Petitioners have failed to prove that Respondents denied Student a FAPE by failing to address Student's safety needs in the IEP-06/23/2020.

G. Petitioners failed to prove Respondents denied Student a FAPE by failing to discuss and/or address Student's need for a process and/or supports to enable Student to transfer into Home School

Petitioners next argument is essentially that Respondents failed to provide a transition plan for Student in Student's IEP. Petitioners liken transition services to a necessary service that need to be a part of Student's IEP. The question of whether a transition plan is required to be included in an IEP is unsettled, however, it appears that failing to include a transition plan in an IEP would be a procedural violation.¹⁸⁵

The IEP team discussed with Parent follow-up meetings that they believed were necessary to have for Student to have a successful school year at Home School.¹⁸⁶ Petitioners have not cited any authority to say that IEP teams cannot meet multiple times to complete a full plan for Student prior to the start of the school year. The IEP meeting was in June 2020, at least a full of month prior to the start of the school year.¹⁸⁷

Here, Respondents sent Parent a draft transition plan, which addressed all of Parent's concerns raised at the IEP meeting, as well as supports to enable Student to transition from Private School to Home School.¹⁸⁸ Petitioners have not demonstrated how the IEP team's request to discuss the transition plan at a separate meeting infringed on Parent's participation or amounted to a loss of educational opportunity or deprivation of educational benefits.

H. Respondents properly determined Student's placement and placed Student in the least restrictive environment that addressed Parent's concerns for Student's safety

¹⁸⁵ *L.S.*, 2019 WL 1421752 at *8.

¹⁸⁶ FOF 68, 84.

¹⁸⁷ FOF 31.

¹⁸⁸ FOF 75.

Under the IDEA, an IEP is a “written statement of for each student with a disability that is developed, reviewed and revised in a meeting ... and that shall include: ... (5) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in [] activities...”¹⁸⁹ This portion of the IEP is commonly referred to the statement regarding least restrictive environment (hereinafter “LRE”) or the student’s educational placement.

Petitioners next two issues relate to Student’s educational placement in the IEP-06/23/2020. The IEP team an extensive discussion about Student’s least restrictive environment.¹⁹⁰ The team began by discussing the *Holland* factors¹⁹¹ and discussing the academic and non-academic benefits for Student in the general education classroom and in the special education classroom. While the IEP team did not move on to discuss more restrictive environments, such as Private School or another public or private separate facility, the IDEA’s main goal is to have students, “to the maximum extent appropriate, children with disabilities ... are education with children who are not disabled.”¹⁹² This does not require IEP teams to continue the discussion of placing a student in a more restrictive environment if the team believes that the student would be able to access his or her education in a less restrictive environment.

¹⁸⁹ H.A.R. §8-60-44(a)(5); 34 C.F.R. §300.320(a)(5).

¹⁹⁰ FOF 56-62.

¹⁹¹ The *Holland* factors refers to a four-part test adopted by the Ninth Circuit Court of Appeals in *Sacramento City Unified School Dist., Bd. of Educ. v. Rachel H. by and through Holland*, 14 F.3d 1398, 1404 (9th Cir. 1994). This balancing test requires courts to consider 1) the educational benefits of placement full-time in a regular class; 2) the non-academic benefits of such placement; 3) the effect [the student] had on the teacher and children in the regular class; and 4) the costs of mainstreaming [the student]. *Id.*

¹⁹² *See Holland*, 14 F.3d at 1403-1404 (*citing* 20 U.S.C. §1412(5)(B)).

The IEP team in this case went further to address whether Student could be placed into a less restrictive environment for certain parts of the day to alleviate the stress placed on Student by having Student in a more general education setting for times of the day when less demands are placed on students. Examples of these times discussed at the IEP meeting were recess, lunch, physical education, class parties, school activities, and an event at Home School called “STEM week.”¹⁹³ It was Parent that objected to every single suggestion that the IEP team made, insisting on Student’s being placed only in a small group setting.¹⁹⁴ Parent further rejected a suggestion that some general education students being brought into the special education classroom or another small setting for activities such as birthday parties.¹⁹⁵

Essentially, throughout the discussion of the educational placement for Student, Parent expressed a desire for Student to have the exact same setting as what Student was getting at Private School, despite Private School being a more restrictive setting than any settings offered by the IEP team.

The IEP team attempted to address Parent’s concerns for Student and agreed to place Student in the small special education setting, and work toward including Student in pre-planned activities, which the school would inform Parent of any plans for prior to the event to make sure that Parent was okay with the parameters of the plan.¹⁹⁶ The IEP team made Student’s educational placement decision after a full discussion of many possible options for Student and with Parent’s input. Petitioners have failed to prove that Respondents did not properly determine Student’s educational placement.

¹⁹³ FOF 59-60.

¹⁹⁴ FOF 61.

¹⁹⁵ FOF 60.

¹⁹⁶ FOF 66, 73.

I. Respondents did not inform Parent that there will be a material failure of the DOE to implement portions of the Student's IEP

Petitioners final argument is that Respondents denied Student a FAPE by informing Parent that there will be a material failure of the DOE to implement portions of Student's IEP. Petitioners have failed to provide any evidence or argument relating to this issue. In Petitioners' Closing Brief, a short paragraph addresses this issue, however both the exhibit citation and the IEP cited to are not consistent with the exhibits presented at the hearing in this case, nor with the date of the IEP in this case.¹⁹⁷ In their Closing Brief, Petitioners argue that the IEP team did not develop the IEP with the idea that Student would be completely separated from non-disabled peers.¹⁹⁸ In this case, the IEP does place Student separately from non-disabled peers, with a slow introduction to general education classes gradually and with knowledge of Parent.¹⁹⁹

At the Hearing, the only evidence presented that appears to be relevant to this issue is an email from Principal to Parent, informing Parent that Student will have face-to-face instruction at Home School for the 2020-2021 school year.²⁰⁰ This email does not assist Petitioners' argument that the DOE informed Parent that there will be a material failure to implement Student's IEP.

As it appears that Petitioners have failed to address this issue both at the Hearing and in their closing brief, this Hearings Officer finds that Petitioners have failed to meet their burden of proof on this issue.

VI. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearings Officer finds that Petitioners have not met their burden of proving the issues in the

¹⁹⁷ See Petitioners' Closing Brief, filed December 18, 2020.

¹⁹⁸ See Petitioners' Closing Brief, filed December 18, 2020.

¹⁹⁹ FOF 73.

²⁰⁰ FOF 85.

Complaint by a preponderance of the evidence. As Petitioners have failed to prove that Respondents denied Student a FAPE, Petitioners' request for tuition reimbursement at Private School or for compensatory education is denied.

RIGHT TO APPEAL

The decision issued by this Hearings Officer is a final determination on the merits. Any party aggrieved by the findings and decision of the Hearings Officer shall have 30 days from the date of the decision of the hearings officer to file a civil action, with respect to the issues presented at the due process hearing, in a district court of the United States or a State court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2) and §8-60-70(b).

DATED: Honolulu, Hawai'i, January 15, 2021.

CHASTITY T. IMAMURA
Hearings Officer
Richards Building
707 Richards Street, Suite 520
Honolulu, Hawai'i 96813
Phone: (808) 587-7680
Fax: (808) 587-7682
atg.odr@hawaii.gov